

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROBERT JACOBY,  
JUDY JACOBY,

Plaintiffs,

v.

Case No. 09-C-0875

KEVIN A. DUDLEY,  
CITY OF MILWAUKEE,

Defendants.

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ORDER DENYING MOTION FOR SUMMARY JUDGMENT (DOC. 30)  
WITHOUT PREJUDICE AND SETTING DEADLINE FOR REILING

Defendants filed a motion for summary judgment on May 2, 2011. Because plaintiffs desired to take certain depositions before responding, the parties filed four stipulations to extensions of time for the filing of plaintiffs' response brief and supporting materials. Based on those stipulations the court granted four extensions of time. The last extension ran out on November 23, 2011. Now, seven months later, the response materials still have not been filed.

On December 6, 2011, the parties filed a fifth stipulation for an extension of time. They agree to an extension to January 9, 2012, for plaintiffs' response to the summary judgment motion, and a deadline of January 30, 2012, for defendants' reply. The reason for the extension is that one deposition remains to be taken—that of former police chief Nanette Hegerty. Prior stipulations referenced the heavy trial schedule of defense counsel as well as other matters that impeded the scheduling of necessary depositions. The most recent stipulation references witness schedules outside the control of counsel. Hegerty's deposition is now scheduled for December 22.

The basis for the extension is valid, and the parties indicate that all counsel have been extremely cooperative in their efforts to move this matter forward.. However, the age of the motion for summary judgment now dictates against permitting another extension, and the possibility exists that another extension will be required if the deposition date changes again based on Hegerty's schedule around the holidays. Moreover, in light of the additional depositions that have been or may be taken, the facts may change, thereby affecting whether there exist genuine issues of material fact. Therefore,

IT IS ORDERED that the present motion for summary judgment (Doc. 30) is denied without prejudice.

IT IS ORDERED that defendants may refile their motion for summary judgment within twenty-one days following completion of the Hegerty deposition. (Defendants may, at their choice, refile the same motion and brief or add additional arguments based on the discovery subsequently taken.) The time for the response and reply will run as set forth in Civil L.R. 56(b).

IT IS FURTHER ORDERED that by December 23 the parties are to file a status report on whether the Hegerty deposition occurred and, if not, the new date for the deposition.

Dated at Milwaukee, Wisconsin, this 7th day of December, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.

C. N. CLEVERT, JR.

CHIEF U. S. DISTRICT JUDGE